

Message Text

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44

ACTION OPIC-06

INFO OCT-01 NEA-10 ISO-00 EB-07 COME-00 AID-05 TRSE-00 L-03

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC PRIORITY 8992

INFO AMCONSUL CALCUTTA

LIMITED OFFICIAL USE NEW DELHI 7245

E.O. 11652: N/A

TAGS: EINV, IN

SUBJ: OPIC CONTRACT OF GUARANTY NO. 1396 - MCNALLY PITTSBURG

MANUFACTURING CORPORATION (MCNALLY)

REF: STATE 120327

1. IN LINE WITH THE REQUEST OF MINISTRY OF FINANCE (..9*)

JOINT SECRETARY BHANDARI TO COMMERCIAL COUNSELOR DURING MEETING
ON MAY 19, EMBASSY OBTAINED FROM MCNALLY BHARAT ENGINEERING
COMPANY LIMITED (BHARAT) A MEMORANDUM AFFIRMING THE COMPANY'S
INTENT TO TAKE EFFECTIVE STEPS TO COMPLY WITH THE GOI CONSENT
ORDER OF SEPTEMBER 30, 1974 FOR ISSUING ADDITIONAL SHARES TO
INDIAN PUBLIC THAT WILL RESULT IN DILUTING EXISTING MCNALLY
SHAREHOLDING. THE MEMORANDUM, WHICH PROVIDED A DEFINITIVE TIME-
FRAME FOR COMPLIANCE ON THE PART OF BHARAT, WAS SUBMITTED TO
MOF BY THE EMBASSY ON MAY 27 WITH THE STRONG REQUEST THAT BHARAT'S
APPLICATION FOR REMITTANCE OF MCNALLY'S 1973 DIVIDENT BE
QUICKLY APPROVED IN VIEW OF THE FORMAL REITERATION OF BHARAT
TO FULLY COMPLY WITH THE GOI DIRECTIVE BY THE FIRST WEEK OF
AUGUST 1975.

2. AS A DIRECT RESULT OF OUR INTERCESSION WITH THE GOI ON BEHALF
OF MCNALLY, WE HAVE BEEN INFORMED, IN WRITING, BY THE MOF UNDER
LETTER DATED MAY 30, 1975, THAT THE MOF/RBI HAD WIHHELD THE
REMITTANCE OF DIVIDENDS TO MCNALLY BECAUSE NO EFFECTIVE STEPS
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HAD BEEN TAKEN BY BHARAT TO COMPLY WITH THE DIRECTIVE OF THE

GOI FOR DILUTING THE FOREIGN SHAREHOLDING IN THE COMPANY TO THE AGREED LEVEL OF 38.30 PERCENT. THE MOF HAS SPECIFICALLY STATED THAT QUOTE: THE REMITTANCE OF DIVIDENDS TO THE NON-RESIDENT SHAREHOLDERS WILL BE RELEASED AS SOON AS THE COMPANY HAS MADE THE PUBLIC ISSUE IN COMPLIANCE OF GOVERNMENT'S ORDER. UNQUOTE.

3. IN VIEW OF THE ASSURANCE GIVEN BY BHARAT TO FULLY COMPLY WITH THE GOI CONSENT ORDER BY THE FIRST WEEK OF AUGUST 1975 AND THE MOF'S EXPLICIT UNDERTAKING TO PERMIT THE REMITTANCE OF DIVIDENDS TO MCNALLY AS SOON AS BHARAT COMPLIED WITH THE GOI DIRECTIVE, EMBASSY RECOMMENDS THAT OPIC WIHOLD FURTHER ACTION ON MCNALLY'S INCONVERTIBILITY CLAIM. IF, HOWEVER, OPIC DECIDES TO FINALLY PROCESS THE MCNALLY CLAIM, AFTER A FULL EVALUATION OF ALL FACTORS INVOLVED, THE MOST FEASIBLE ALTERNATIVE FOR REALIZING DOLLARS UNDER THE GUARANTY CONTRACT WOULD BE FOR OPIC TO TAKE ONLY AN ASSIGNMENT OF A BENEFICIAL INTEREST IN MCNALLY'S RIGHT TO DIVIDEND WITH THE STIPULATION THAT IT SHALL BE MCNALLY'S RESPONSIBILITY TO PURSUE THE APPLICATION FOR TRANSFER OF THE DIVIDEND INVOLVED WITH GOI/RBI AND ALSO FULLY COMPLY WITH ALL SUCH CONDITIONS THAT MIGHT BE STIPULATED.

4. COPIES OF THE EMBASSY'S LETTER OF MAY 27, 1975 TO MOF JOINT SECRETARY BHANDARI AND THE FOM'S REPLY OF MAY 30, 1975 HAVE BEEN AIRPOUCHED TO THE DEPARTMENT.

5. COMMENT: IN INFORMAL DISCUSSIONS, MOF OFFICIALS HAVE TOLD EMBOFFS THAT THE MOF/RBI ACTION WAS NECESSITATED BECAUSE OF BHARAT'S RECALCITRANT ATTITUDE TOWARD GOI DIRECTIVES AND INSTRUCTIONS OVER THE PAST SEVERAL YEARS. THE PRESENT GOI ACTION IN LINKING THE REMITTANCE ISSUE WITH THE DILUTION OF MCNALLY SHAREHOLDING IN BHARAT WAS A TOP-LEVEL EXECUTIVE DECISION ON THE PART OF THE GOI/RBI TO ENFORCE THE COMPLIANCE OF A LONG OUTSTANDING COMMITMENT MADE BY BHARAT TO THE MOF AND THE RESPONSIBILITY FOR THE PRESENT IMPASSE MUST BE BORNE LARGELY BY BHARAT'S TOP-MANAGEMENT, ESPECIALLY MANAGING DIRECTOR PRAN PRASAD, WHO HAVE CONSISTENTLY FLOUTED MANDATORY GOI DIRECTIVES.

SCHNEIDER

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Message Attributes

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Disposition Approved on Date:
Disposition Authority: greenet
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Margaret P. Grafeld
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